DOCUMENT RESUME

ED 141 019 RC 009 955

AUTHOR	Benson, Michael
TITLE	Sovereignty: The Navajo Nation and Taxation.
INSTITUTION	DNA Legal Services, Inc., Window Rock, Ariz.
PUB DATE	76
NOTE	63p.; Not available in hard copy due to marginal legibility of the original document
AVAILABLE FROM	DNA-People's Legal Services, Inc., Box 306, Window Rock, Arizona 86515 ($1.50)
EDRS PRICE	MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS	*American Indians; Anglo Americans; Financial Support; *Government (Administrative Body); Natural Resources; *Program Development; Taxes; *Tax Support; *Tribes
IDENTIFIERS	*Navajo Nation; *Navajos

ABSTRACT

Contending that it is wrong for the Navajo Government to continue to neglect its citizens by not implementing a taxation program, this monograph is written to generate interest in and discussion of a taxation program and the Navajo Tax Commission, created in 1974. Specifically, this booklet presents basic information re: the financing of the Navajo Government (who pays for the government and the depletion of the natural resources); Navajo generosity (those benefiting, taxes collected from within the Nation, other taxes paid by Navajos to non-Navajos, and Navajo generosity in the beginning); taxes and the way other governments finance themselves; tribal taxation (Zunis, Hopis, and legalities); the McDonald Administration and Navajo taxation; and conclusions and recommendations (Navajo people cannot depend upon their natural resources to finance their government forever; both Navajos and non-Navajos benefit from the Navajo Government; the Hopi and Zuni governments use taxation to finance their operations; because of delays in the implementation of the Navajo Tax Commission, the Navajo Nation has lost millions of tax dollars and should begin taxing as soon as possible; and the Navajo Tribal Council should immediately declare a moratorium on all major development in the Navajo Nation until a Navajo taxation program is ready for implementation). (JC)

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THE NAVAJO NATION AND TAXATION

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October 22, 1976

FOREWORD

Recently, there has been a great deal of discussion within the Navajo Nation concerning taxation. The interest in taxation results from the prospect of more intensive development of Navajo natural resources.

This book on tribal taxation was prepared by Michael Benson, a Navajo studying political science at Stanford University. Most of the work in compiling information for this book was done in the summer of 1975.

The book presents an interesting account of the issues related to taxation in the Navajo Nation, which we wish to extend to the Navajo people. We hope that it will generate and encourage positive thought and discussion on the Navajo government's power to tax the corporations and other entities which prosper within the Navajo Nation.

We believe that the Navajo Tribe should implement a taxation program immediately, if tribal self-government is to be preserved and enhanced.

Peterson Zah, Director
DNA-People's Legal Services, Inc.

INTRODUCTION

The following discussion of taxation in the Navajo Nation is meant to provide some basic information about issues related to the finance of Navajo government; this is not a technical book. A stance-an opinion-is presented in the handling of the facts and issues. Navajo people are free to agree or disagree with our point of view. Our purpose is to draw a response from the Navajo people and to spark public discussion on the way our government is financed.

The Navajo Tax Commission, created by a Navajo Tribal Council resolution on Januray 16, 1974, has finally begun work on a Navajo Nation taxation program. It is our belief that the Navajo public must monitor the Commission's progress to assure that a fair taxation program is implemented. We hope that the discussion which we present in the following provides a workable understanding of the issues which Navajo people can use as a springboard to further insight.

There are many obstacles which Navajo people encounter when they attempt to gain an adequate understanding of the problems facing the Navajo Nation: radio programs present only stunted reports on the issues that arise; the Navajo Times is limited to a weekly summary; the Gallup Independent and other daily newspaper provide a great deal of information, but they tend to focus on one issue at a time; and elected officials do not always report back to their constituencies. Here we try to fill the gap in one particular area by talking

about taxation together with other issues which are related to it. We hope Navajo people will take the time to read through this book, and use the ideas and information to begin their own discussions.

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I. Navajo Government Finance: "Who pays?"

The Navajo Government does not collect taxes to finance its operation. Here we shall explain where the money comes from to operate the Navajo Government, and discuss some of the problems which arise from the way the Navajo Government pays for its operation.

A. Who pays for the Operation of the Navajo Government?

Compared to other Indian tribes, Navajos have a fairly large government. We have the Navajo Tribal Council which deals with matters concerning the whole Navajo Nation. At the local level, we have our Chapter governments. The Chairman and his administration oversee the day to day running of the various tribal programs, the planning agencies, and the police.

A lot of money goes into running our Navajo Government.[1] According to Peat, Marwick, Mitchell, and Company, the auditors

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1. The following discussion of Navajo Government finance involves the "General Fund" budget which includes expenditures for operating the Navajo Government. Like all governments in the United States, the Navajo Nation also receives Revenue Sharing money. This is put into the Tribe's "Revenue Sharing Fund" and is budgeted separately. The Navajo Government, like the state, city and county governments, applies for and receives monies from the federal government for specific programs. These, along with grants from private sources are handled in the "Grant Fund". Money previously invested for scholarship purposes is handled in the "Scholarship Fund".

In addition, the State of Utah retains 37.5% of oil and gas and mineral revenues from land in the Utah sector of the Navajo Nation. With this money, the State administers various programs for Navajos living in the Utah portion of the Navajo Nation. The funds are budgeted and administered by the Utah State Division of Indian Affairs through the Utah Development Council. This situation results from a stipulation in the laws that were enacted when a portion of Utah State was given back to the Navajos.

for the Navajo Government, the total budgeted General Fund appropriations approved by the Navajo Tribal Council for Fiscal Year 1975 (July 1, 1974 - June 30, 1975) was in excess of $29 million ($29,234,654).[2] The following are examples of the appropriations from the 1975 Navajo Tribal Budget.[3]

Division of Law Enforcement (Police)	$3,586,258
Social Services Program	2,053,007
Navajo Tribal Council	1,075,900
Chapter Officers	630,240
Office of Program Development	549,780
Office of the Prosecutor	150,103
Legal Aid Department	130,384
Veteran Affairs	67,225
Shiprock Warehouse Administration	40,839
Navajo Tribal Band	36,700
Window Rock Civic Center	36,463
Boy Scouts of America	18,000

These are twelve (12) examples from over 100 line items which appeared in the 1975 Fiscal Year budget.

For the past fifteen years, since 1960, the Navajo Government has been spending at least 17 million dollars each year from the General Fund (see Appendix 2). Almost all this money comes from resources from the land that is held in trust by the United States Government for all Navajos. Although Navajos have permits to use certain pieces of land, Navajos do not own land the way most Americans own land. Other people can sell their land anytime they want, and if they do, the money goes to them. If minerals are found on

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2. Peat, Marwick, Mitchell, and Company, "Navajo Tribe, Financial Statements, June 30, 1975 and 1974", September, 1975 p. 6.

3. Ibid., pp. 3 - 6

their land, the money is paid to them to spend as they want. For Navajos, the money from the sale of oil, gas, minerals, and timber from the land is put into the Tribe's General Fund. It is this money that is used to pay for operating the tribal government. The Navajo Tribal Council spends this money with the approval of the United States Department of the Interior.

The Navajo Tribal Government does not operate on taxes. The Navajo Government does collect a small number of fees on licenses and permits (which are a kind of tax), but the income is not substantial. The following lists 1975 Fiscal Year revenues:[4]

Navajo Government Revenues
Year ended June 30, 1975

Revenues:

Oil & Gas revenues (royalties, bonuses, rentals)	$16,195,953
Mining royalties & rentals	2,969,816
Interest income	4,223,697
Trader site rentals, fees & permits	1,154,740
Timber sales to NFPI	1,074,600
Court fines and fees	437,975
Land & building rents	377,796
Self-insurance premiums	272,147
Ranch receipts	195,569
Feed grain sale	186,403
Ground water ACP	69,255
Capital equipment sales proceeds	1,580
Cash received from NFPI	---
Contract revenue for program Development	---
Settlement from Westward Coach Corporation	---
Other, net	389,861
	$27,549,392

4. Ibid., p. 6.

Most of the money is the result of resources from the land held in trust for Navajos by the United States Government. It is this Navajo money that runs the Navajo Government.

It is estimated that the Navajo Government has received income totaling over 500 million dollars since it was established in 1923.[5] DNA was able to get specific figures on Tribal income for the years 1958 through 1972 (see Appendix 1). In these fifteen years, the Navajo Government received income totaling $279,726,652--almost 280 million dollars.

During the same fifteen year period (1958-1972), the Tribe's expenditures totaled $296,498,357--over 16 million dollars more than the money received (see Appendix 2). In any year that the Navajo Government spends more than its total income for the year, the amount that is overspent must come from the Tribe's savings. The savings are in the "General Fund," which includes the money that has accumulated from past years when the Tribe spent less than its income for the year. Generally, it is this overspending and the resulting decrease in the Tribe's reserves that people are referring to when they say that the Tribe is "running out of money" or that there is a "depletion" of the Tribe's reserve funds.

We were able to obtain the "unappropriated" balances in the General Fund for the years 1958 through 1972 (the figures appear in Appendix 2). While there may have actually been

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5. This estimate was provided by Mr. Rex Franklin, Deputy Area Director, Navajo Area, Bureau of Indian Affairs, Gallup, New Mexico, March 9, 1976 (the specific figure was not immediately available).

more money in the General Fund, these figures represent the amount on June 30 of each year which was not owed to anybody and which the Tribal Council had not made specific plans for. In 1958, the unappropriated balance was about 69 million dollars. In 1975 the unappropriated balance was approximately 45 million dollars, representing a decrease of 24 million dollars since 1958.[6] While the unappropriated balance has fluctuated over the years, the 1975 unappropriated balance ($45,112,858) is lower than any of the 1958-1972 figures. It does appear that the Navajo Tribe is "running out of money".

There is reason to be concerned about the Tribe's reserve funds being depleted, but many Navajos fail to realize that there is an even greater problem which lies ahead. Many Navajos are not aware that the natural resources--the source of the money used to operate the Navajo Government--are being used up.

B. The Depletion of the Navajo Nation's Natural Resources:

According to the Navajo Nation's Office of Minerals Development, the minerals that now provide the major portion of the Navajo Government's revenues will soon be used up or will soon become unsaleable. Mineral revenues represent the largest, steady source of income to the Navajo Government. In each of the past seven fiscal years, mineral revenues have

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6. "Financial Statement", p. 1.

accounted for over fifty per cent of the Navajo Government's revenue except in 1970 when the Tribe sold the Tribally owned telephone company for a large settlement, and in 1973 when over sever million dollars was realized from the land dispute settlement with the Utes.[7]

Oil and Gas

The minerals that have provided revenues to the Navajo Government are petroleum (oil and gas), uranium and coal. Oil and gas revenues account for the major part of these revenues. In the 1975 fiscal year, oil and gas revenues made up 83.3% of all the Navajo Nation's mineral revenues. In 1974, it was 82.0%, in 1973, 76.8%, and in 1972, 84.4%.[8] It is a fact that oil and gas are the minerals most rapidly being used up.

Mr. W. D. Armstrong, geologist for the Navajo Nation Office of Minerals Development reports that all the known oil fields in the Navajo Nation have been developed.[9] There are no new oil fields. Mr. Armstrong says that it is "more and more unlikely" that any more will be found. Since natural gas is generally found where oil is found, we can expect its production to decline as oil production declines.

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7. Data supplied by Mr. W. D. Armstrong, Geologist, Navajo Nation Office of Minerals Development, Window Rock, Navajo Nation (in DNA files), March, 1976.

8. Ibid.

9. Interview with Mr. W. D. Armstrong, Geologist, Navajo Nation Office of Minerals Development, Window Rock, Navajo Nation, February 27, 1976.

Illustration number 1 on page 11, depicts Navajo Nation gas production from 1968 through 1975. We can see that except for the spurt in 1971 and 1972, the trend has been declining production. The total Navajo Nation production of natural gas for fiscal years 1973, 1974, and 1975 is 19,337,711 thousand cubic feet. This is less than the production figure of 19,477,424 thousand cubic feet for fiscal year 1968 alone. Production in fiscal year 1975 was also only 28.9% of the fiscal year 1968 production.

Illustration number 2 on page 12, reveals the decline in Navajo Nation oil production. Production for 1974 and 1975 together does not equal the 1968 production figure. The 1975 production is only 49% of 1968 production. There is a substantial increase in 1973, and production for 1974 and 1975 remained higher than the 1972 figure, but this does not indicate the start of a long term trend of increasing production. The Navajo Nation Office of Mineral Development attributes this to the energy shortage.[10] The energy shortage brought higher prices for oil and gave the oil companies an incentive to invest more money in procedures to get more oil out of wells already drilled. So the increase in production is not a result of any discovery of new oil fields.

Coal and Uranium

Illustration number 3 on page 13, shows that coal production in the Navajo Nation is certainly increasing. If the

10. Ibid.

Tribal Council wishes to allow more mining, production and revenues from coal will increase further for a short period of time. According to the Office of Minerals Development, the United States Geologist Survey estimates that there is 45-50 million tons of coal "possible" from Navajo lands.[11] Mr. Armstrong estimates that at the present production rate, mining could continue for 188 years, but there are problems.

Mr. Armstrong states that, "There is no projected use for coal after the year 2000."[12] Alternative energy sources are being sought. There are two reasons for this. First, people in the United States and all over the world are becoming more concerned about what men and women are doing to their environment. People are concerned about the scars upon the Earth that strip mines create. People want to stop the pollution from energy consumption that interferes with the ecological processes which make life possible. Second, the energy crisis and the oil shortage especially have caused governments and science to seriously begin developing more or less permanent sources of energy. Various ways to utilize energy from the sun are being studied.

Uranium is another mineral which has provided substantial revenue to the Navajo Nation in the past, and more revenues are anticipated. Production is just beginning at one mine, and exploration is likely to reveal more deposits. The Navajo

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11. Ibid.

12. Ibid. (There are scientists who do not agree with Mr. Armstrong that coal and uranium will be obsolete by the year 2000. In any case, the fact remains that these minerals are also depletable.)

Nation will receive in excess of 6 million dollars for exploration rights alone when the Bureau of Indian Affairs approves the agreement allowing the Exxon Corporation to explore for uranium in the northern area of the Navajo Nation. Mr. Armstrong could not at this time estimate how much uranium there is in the Navajo lands. He states that revenues will be "substantial, in excess of one million dollars per year" when production at the one mine in the Navajo Nation is in full operation.[13]

There are problems with uranium even if great deposits are discovered. Like coal, uranium will soon become obsolete as a source of energy. Mr. Armstrong explains that there is also no projected use for uranium after the year 2000. Nuclear energy, which is obtained from uranium also presents a number of dangers to health and environment. The alternative energy sources which replace coal as a source of energy will also make uranium obsolete.

Navajo land does contain a lot of coal and there are possibilities for uranium, but these minerals may be worthless in about 25 years. The facts are clear. The minerals which have provided the revenues for financing the Navajo Government are fast being depleted or are fast becoming obsolete. After the year 2000, it is possible that the Navajo Nation will not be receiving any money from coal or uranium, and the oil and gas wells may also be completely dry.

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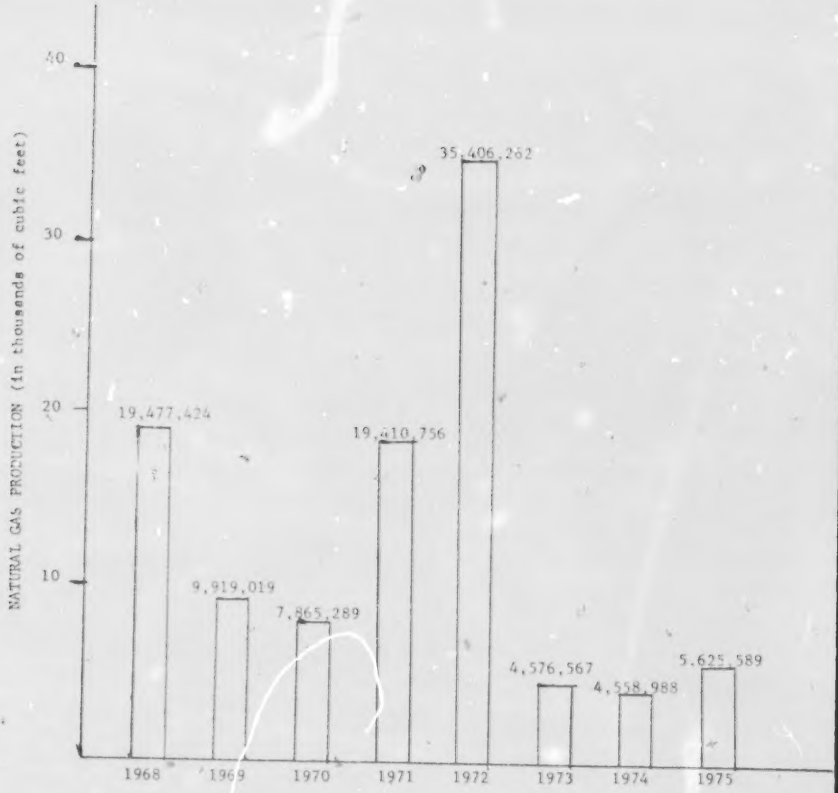
13. Ibid.

So even though stories about the reserve "depletion" may make newspaper headlines, and even though Navajo citizens become excited or even frightened when they hear that the Tribe is "running out of money", the major problem with the way Navajos pay for their government is not merely that the Tribe's reserve funds are being used up. The urgent problem is that Navajos must develop a new way to finance their government because the natural resources which we have depended upon to pay for our government are either being used up or are becoming obsolete.

14. "Navajo Trust Fund Depletion Disputed", The Gallup Independent, February 16, 1976, p. 1.

Illustration No. 1

NAVAJO NATION NATURAL GAS PRODUCTION
(in thousands of cubic feet)



Source: Navajo Nation Office of Minerals Development, Window Rock, Navajo Nation

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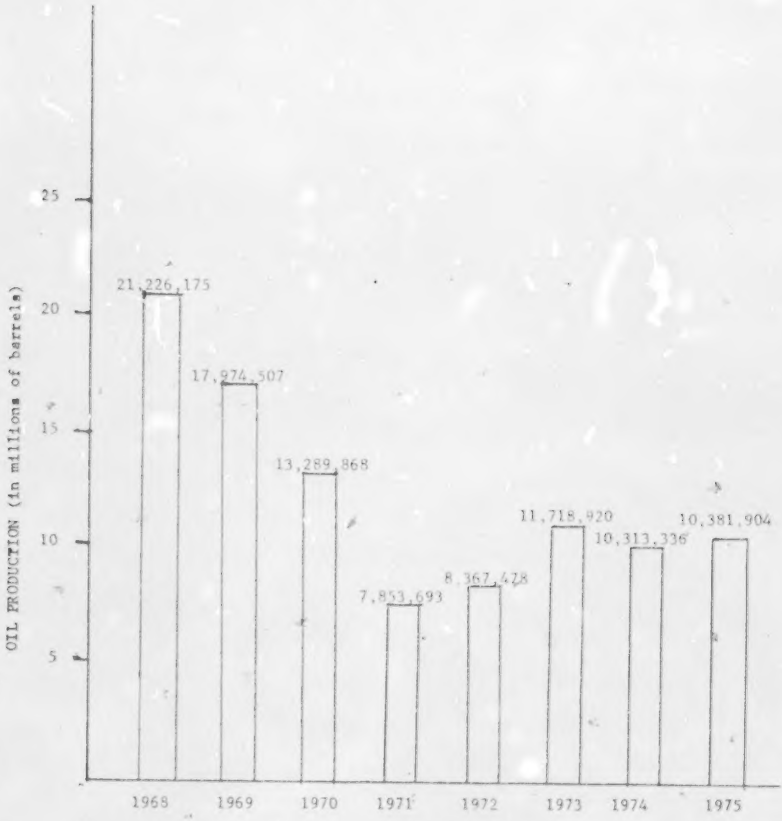
Illustration No. 2

NAVAJO NATION OIL PRODUCTION
(in millions of barrels)

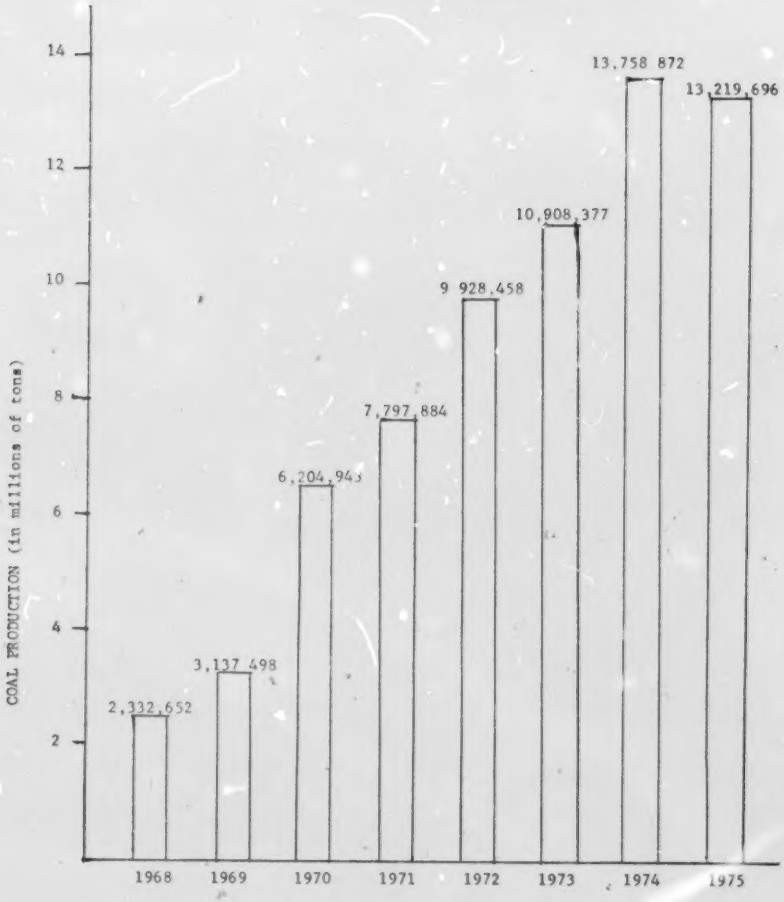


Source: Navajo Nation Office of Minerals Development, Window Rock, Navajo Nation

12

Illustration No. 3

NAVAJO NATION COAL PRODUCTION
(in millions of tons)



Source: Navajo Nation Office of Minerals Development, Window Rock, Navajo Nation

II. Navajo Generosity

A. Who Benefits from the Navajo Government?

Navajo people obviously benefit from the Navajo Government. Navajo elected officials represent Navajo interests to the non-Navajo governments. They make important decisions on our behalf which result in an orderly Navajo society. The Chairman of the Navajo Nation and the administrators coordinate programs such as the Legal Aid Department, Tribal Hearth and Welfare program, the Veteran Affairs Office, and education programs in the Division of Education.

We must stress, however, that the programs that benefit Navajos directly, and solely, are few, if any. Of the ten categories of appropriations in the 1975 Tribal Budget, perhaps Social Services comes closest to being totally for the benefit of Navajo people.[15] The other nine categories: Legislative, Office of the Judiciary, Executive, Administration, Office of the Controller, Operations, Business Management, Services, and Contributions all contain line items for general government administration. The total of the $2,336,165 appropriated in the Legislative category is obviously for general government; other examples are the appropriations for "Central Records" and "Division of Law Enforcement" in the Administration category and the appropriation for the "Office of Operations" in Operations category. Anybody, Navajo or non-Navajo, who uses the channels

15. We must remember although Navajos receive the actual payments or services from various social service programs, the fact that there are social service programs serves the interests of anybody who would benefit from there being a stable government and society in the Navajo Nation. These would include all Anglo businessmen in the Navajo Nation and outside who need an orderly social environment in order to carry on business activities.

and procedures provided by the Navajo Government, or who steps into territory under Navajo jurisdiction benefits from these appropriations.

In 1974, there were 5,860 non-Navajos earning an income from full time employment in the Navajo Nation.[16] The non-Navajos and their family members who live and/or work in the Navajo Nation benefit from the Navajo Government. The millions of dollars Navajos spend annually on government benefit these non-Navajos. Just the existence of a Navajo Government makes possible a peaceful, orderly society in which these non-Navajos can live and/or work. Tourists and people just passing through the Navajo Nation benefit from the protection of the Navajo police who patrol the highways, and they benefit generally from the orderly society which is made possible by the Navajo Government.

It is important to understand that even Anglo residents of the Navajo Nation who have never had to call the Navajo Police to their homes still enjoy the protection provided by the Navajo Police. The fact that the Navajo Tribal Council passes laws, administers a Navajo court system, and maintains a Navajo police force which enforces these laws causes people to act in a peaceful, lawful manner. Because of this, any person, Navajo or non-Navajo, benefits directly from the Navajo Government merely by stepping into territory under Navajo jurisdiction.

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16. Navajo Nation Office of Program Development, "Overall Economic Development Plan", 1974, p. 23.

Although Anglos living in the Navajo Nation are not legally eligible to vote in Navajo elections, they nonetheless benefit from the existence of a Navajo Government. If our elected officials did not make laws to set limits on the behavior of people and if the Navajo Government did not provide the channnels and procedures to deal with the needs, wishes, and complaints of Navajos and non-Navajos, there would be vast confusion and conflict. Non-Navajos do benefit from our Navajo Government.

When we talk about non-Navajos benefiting from our Government, we mean non-Navajo individuals as well as non-Navajo businesses. The power generating companies, mining companies, factories, oil companies, and other industries would not be able to operate in the absence of a Navajo Government. Government is very important to businesses all over the world. Since businesses may need materials from several kinds of industries, they need an orderly society in which they can establish routine cooperation, and to sell their products businesses obviously need a regulated society.

The closing of the Shiprock Fairchild Plant shows us how important a strong, stable government is to businesses. Fairchild officials claim they decided to close the plant because the Navajo Government could not guarantee that disruptions similar to the American Indian Movement (AIM) takeover of its plant would not happen again. This may or may not be Fairchild's

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17. "Tribe Hunts 600 Lost Jobs", The Gallup Independent, March 13, 1975, p. 1.

real reason for leaving. The point is that Fairchild, a major United States corporation, felt that it could cite lack of effective government as a legitimate reason for closing down.

Although Fairchild is not paying its meager wages to Navajo employees anymore because Fairchild officials were disappointed in our Government, no other businesses have followed their example. Instead these businesses continue to make millions of dollars in profits from their operations in the Navajo Nation. There is no question that the Navajo Government provides the social and political stability needed for economic activity.

A survey completed early this year by the Office of Program Development shows that there are 936 businesses in the Navajo Nation. The types of businesses include: oil and gas companies, mines, power plants, a General Dynmaics factory, a telephone company, banks, trading posts, arts and crafts stores, and beauty parlors. Thanks to the Navajo Government, it appears that the Navajo Nation social environment is good for business activity of all kinds.

Most non-Navajos who work in the Navajo Nation earn more money each year than most Navajos. In 1969, the Anglo population in the Navajo Nation was about one-eighth of the Navajo population, yet they earned over one-third of

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18. Navajo Nation Office of Program Development, "Agency Specific: Number of Business Establishments and Employment - Navajos and Non-Navajos, 1976."

the money that was earned in the Navajo Nation that year.[19] Anglos own most of the businesses in the Navajo Nation; of the non-government businesses, they own 573 businesses, while Navajos own only 165.[20] The Navajo Government certainly does benefit non-Navajos.

In discussing how our Government benefits non-Navajos it is important to distinguish between individuals and businesses. Taking as an example the Great Western Bank in Window Rock, we can see that the non-Navajo employees benefit and that the Bank itself as a business benefits. The Bank employees are able to earn their salaries and the Bank is able to make a profit because of the existence of the Navajo Government. The following are categories of non-Navajo individuals and non-Navajo businesses benefiting from the Navajo Government:

Non-Navajo Individuals

- PHS Doctors and Nurses
- BIA employees
- Trading Post employees
- Missionaries
- Navajo Tribal employees
- Construction workers
- Bill Collectors
- Carnival employees
- Power Company employees
- Mine employees
- Factory employees
- Bank employees

Non-Navajo Businesses

- Trading Posts
- Factories
- Mines
- Construction Companies
- Banks
- Truck Companies (transporting goods across the Navajo Nation)
- Power Companies
- Pawnshops
- Oil and Gas Companies
- Telephone Companies
- Carnivals
- Peddlers

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19. Gerald J. Boyle, "Revenue Alternatives for the Navajo Nation", October, 1973, p. 12.

20. Navajo Nation Office of Program Development, "Agency Specific", 1976.

The bonuses, royalties, and rents that businesses pay to the Navajo Nation are not taxes; these are paid to the Navajo Nation for the land that is used and/or the minerals that are extracted. Royalties and rents do not pay for the law and order, provided by the Navajo Government, which makes it possible to carry on money making activity.

The State of New Mexico, like the Navajo Nation, owns land which it leases to private industry for mineral development. The State collects rents, royalties, and a whole range of taxes from the companies that lease the land. There is no reason why the Navajo Nation should not collect taxes in addition to rents and royalties.

B. Taxes Collected from within the Navajo Nation.

Some Navajos probably think we are doing too much for the Anglos who live, work, or conduct business in the Navajo Nation without paying taxes for the benefits they receive from our Government. Navajo people or at least Navajo elected officials, are more generous than that. In addition to paying all federal taxes, Navajos pay taxes to support the State Governments of Utah, Arizona and New Mexico. We also help finance six County Governments in those States.[21]

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21. We did not research sufficiently the situations in the Canoncito and Alamo portions of the Navajo to include the New Mexico Counties in which they are located. These portions of the Navajo Nation are located in Bernalillo County and Socorro County respectively.

The following governments collect taxes from sources within the Navajo Nation:

Governments that Collect Taxes from within the Navajo Nation

1. The United States
2. The State of New Mexico
3. The State of Arizona
4. The State of Utah
5. McKinley County (In New Mexico)
6. San Juan County (In New Mexico)
7. Apache County (In Arizona)
8. Coconino County (In Arizona)
9. Navajo County (In Arizona)
10. San Juan County (In Utah)

State and County governments collect taxes on property located in the Navajo Nation and on income derived from activities in the Navajo Nation. They directly tax the incomes and property of non-Navajos who live, work or conduct businesses in the Navajo Nation. They collect a lot of taxes "indirectly" from Navajos and non-Navajos by taxing wholesalers who supply Navajo Nation retailers with such commodities as gasoline and cigarettes. Although the wholesalers pay these taxes, they are eventually passed on to the buyers of cigarettes or gasoline at the trading post; so we pay these taxes indirectly.

The following are some of the kinds of taxes which are directly and indirectly collected by the federal, state, and county governments from within the Navajo Nation:

The Different Taxes Collected from Sources within the Navajo Nation

I. Federal Taxes (Collected from Navajos and Non-Navajos):

1. Personal income tax
2. Corporate income tax (on business profits)

II. State Taxes:

1. Collected from Navajos:

   a). Taxes on gasoline
   b). Taxes on cigarettes and other tobacco products
   c). Various taxes on oil, gas, and mineral royalities
   d). Motor vehicle licenses and registration fees
   e). Sales taxes

2. Collected from non-Navajos living in the Navajo Nation:

   a). Property taxes (on improvements, business)
   b). Sales taxes
   c). Personal income taxes
   d). Corporate income taxes
   e). Various merchant license fees
   f). Various taxes on the value of the natural resource products severed from the soil (this is in addition to all other taxes such as income taxes which result from the development of natural resources in the Navajo Nation)

III. County Taxes:

1. Collected from Navajos: None

2. Collected from non-Navajos:

   a). Property taxes on house trailers, mining equipment, oil and gas equipment, trading post equipment, livestock
   b). Various license fees

The taxes mentioned above are broad categories of taxes which are collected from within the Navajo Nation. The number of specific taxes collected is much greater.

Although the law is not clear, the States claim that they have the legal right to levy all their taxes on all Anglo property on Indian reservations. All personal and business incomes of Anglos working and/or living in the Navajo Nation are also taxed by the states.

We attempted to compile accurate figures on all the taxes collected in recent years by the States and Counties from within the Navajo Nation. We were not able to do that because of limited cooperation from the taxing agencies and the Bureau of Indian Affairs. Citizens of the different Counties, Cities, and States can easily obtain annual reports which tell them exactly how much and what kind of taxes are collected from their county, city, or state. No such reports are available for citizens of the Navajo Nation. Hopefully the Navajo Government, or some other agency will soon fill the gap. We were able to obtain some complete figures from some of the more cooperative New Mexico taxing agencies. These figures follow and they indicate the staggering amounts of taxes collected by non-Navajo governments from within the Navajo Nation:

T A B L E

New Mexico State Oil and Gas Taxes Collected
from Navajo Nation Sources, 1972-74

Kinds of Taxes Collected:

Oil and Gas School tax
Oil and Gas Severence tax
Oil and Gas Conservation tax
Oil and Gas Ad Valorem Production tax

Oil and Gas Taxes Paid by
Navajo Tribe 1972-1974

	1974	1973	1972
School tax	$ 70,522.35	$26,709.45	$ 20,870.29
Severance tax	$ 87,335.01	$26,185.78	$ 20,809.78
Conservation tax	3,871.87	1,466.38	1,145.69
Ad Valorem tax	29,558.81	11,164.45	8,648.87
TOTAL	$191,288.04	$65,526.06	$ 51,474.63

Oil and Gas Taxes Paid by
the Companies Operating within the Navajo Nation, 1972-74

	1974	1973	1972
School tax	$ 493,656.45	$ 186,966.15	$ 146.092.03
Severance tax	611,345.07	183,300.46	145,669.46
Conservation tax	27,103.09	10,264.66	8,019.83
Ad Valorem tax	206,011.67	78,151.15	60,542.09
TOTAL:	$ 1,339,016.28	$ 458,682.42	$ 360,322.41

Total of taxes collected from Navajo Tribe and Companies	1974	1973	1972
	$1,530,304.32	$ 524,208.48	$411,797.04

Three year total for gas and oil taxes collected by New Mexico from Navajo Nation sources: $2,466,309.84

Source: New Mexico State Oil and Gas Accounting Commission, Santa Fe, New Mexico.

The State of New Mexico does collect four kinds of taxes on oil and gas. The Table (page 23) lists the types of taxes which are collected. The table shows:

1. the amounts of taxes collected over the past three years on the Navajo share of oil and gas revenues; $51,475 in 1972, $65,526 in 1973, and $191,288 in 1974;

2. the amounts of taxes collected from the companies that operate the wells; $360,322 in 1972, $458,682 in 1973, and $1,339,016 in 1974; and

3. the total amounts of taxes collected by the State of New Mexico from the Navajo Tribe and the companies over the past three years on oil and gas produced in the Navajo Nation; $411,797 in 1972, $524,208 in 1973, and $1,530,016 in 1974.

Adding together the figures for the three years, we can see that the State of New Mexico has collected $2,466,309.84 in taxes on oil and gas produced in the Navajo Nation in the years 1972-1974 alone.

The gas and oil taxes which the state of New Mexico collected in 1972, 1973, and 1974 is a lot of money, but the total amount of taxes collected by non-Navajo governments from within the Navajo Nation is a great deal more. Other New Mexico State taxing agencies as well as the two New Mexico counties collect a number of other taxes from Navajo Nation sources. Of the fiscal year 1974 property taxes which San Juan County (New Mexico) collected in the County from sources outside the various city limits to finance its government, over 43 per cent was collected on property in the Navajo Nation.[22]

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22. Estimate derived from computation of figures provided by the San Juan County Assessor's Office on the total assessed valuation of property outside the various city limits (in DNA files), and figures provided by the New Mexico State Property Tax Department on the assessed valuations of the major properties within the Navajo Nation that are taxed (in DNA fles).

McKinley County, the other New Mexico County which collects taxes within the Navajo Nation collected property taxes on at least 14 million dollars worth of property in the Navajo Nation during the 1974 fiscal year.[23]

The only other useful figures we were able to obtain were for property taxes collected by Coconino County in Arizona. According to the County Assessor's figures, $3,022,110 was collected in 1973, $5,699,851 in 1974, and $12,103,744 in 1975.[24] The total collected for the three years by Coconino County is $20,725,705.

It is important to remember that although the above figures indicate the large amount of taxes that non-Navajo governments collect from the Navajo Nation, none of the figures come close to the total amount of taxes which they collect yearly from Navajo Nation sources. The state of New Mexico collects more

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23. The New Mexico State Property Tax Department provided us with information that the full value of properties located in the Navajo Nation in the categories of 1) electric generation and transmission 2) mining property 3) telephone 4) telegraph 5) pipelines and 6) drilling contractors, general contractors, and others which were taxed by McKinley amounted to $13,925,751. Incomplete figures from the McKinley County Assessor's Office on the value of improvements and equipment belonging to non-Indians and located in the Navajo Nation indicate that the full value of property in the Navajo Nation taxed by McKinley County is in excess of 14 million dollars.

24. Figures provided by the Coconino County Assessor's Office (in DNA Files).

taxes each year through its other taxing agencies. We have not reported here the taxes collected by any of the State taxing agencies of Utah and Arizona, or by San Juan County in Utah, or Apache and Navajo Counties in Arizona. There is no doubt that many millions of dollars more are collected since most of the Navajo Nation's oil wealth is located in San Juan County, Utah, and the giant Peabody Coal mine is located in Navajo County, Arizona.

It is no big secret that the non-Navajo governments receive more money in taxes from the development of Navajo Nation resources, than the income realized by the Tribe from these developments. A 1972 report states that the Navajo Nation received $1.4 million annually in royalties for the coal that is used at the Four Corners Power Plant, in contrast to $7.2 million received yearly by "state, county, and local governments" from various taxes on the coal and equipment used.[25] The coal that is used is Navajo coal, and the plant is located on Navajo land - yet the payments received by the Navajo Nation totals less than one fifth of the amount of taxes collected by the non-Navajo governments.

When the Navajo Power Plant in Page, Navajo Nation (Arizona Sector) is in full operation, taxes to the non-Navajo governments will be $16.3 million per year, while Navajo royalties will be only $1.4 million yearly.[26] This means

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25. U.S Department of the Interior, "Southwest Energy Study: An Evaluation of Coal-Fired Electric Generation in the Southwest", (Draft) April, 1972, p. S-17.

26. Ibid., p. S-17.

that although the Navajo Power Plant will be using Navajo coal and will be located on Navajo land, the State of Arizona and Navajo and Coconino Counties will receive approximately 12 times as much money as the Navajo people.

The Navajo Government has absolutely no say over how these tax monies collected within the Navajo Nation are spent. Navajos do vote for state officials and we currently have two legislators in New Mexico and three in Arizona, but being a small minority, their influence is small. Perhaps the only instance in which Navajos do have some say in what happens to tax monies collected from within the Navajo Nation is in McKinley County, where two of the three County Commissioners are Navajos. And while the states turn back some of the taxes to the cities and counties in which they were collected, neither the Navajo Tribal Council nor any of the Chapter Governments are paid back any of the taxes which are collected from within Navajo jurisidiction.

Now let us review what is happening in the Navajo Nation in regard to: 1) the financing of Navajo government; 2) the benefits which non-Navajos receive from the Navajo Government; and 3) the taxes which non-Navajo governments collect from within the Navajo Nation.[1] First, we explained that it is Navajo money from the development of Navajo resources that pays for Navajo government. No taxes are collected to operate the Navajo Government. Second, we discussed how non-Navajos benefit tremedously from Navajo government, and that they pay

nothing for the benefits which they receive. Third, we have just illustrated how the non-Navajo governments are collecting millions of dollars in taxes from sources within the Navajo Nation. The Navajo Government and the Navajo people receive nothing for making it all possible.

C. Other Taxes Paid by Navajos to Non-Navajo Governments:

Navajos allow Anglos to live, work, and do business in the Navaj Nation without taxing them. Further, the money that these Anglos make in the Navajo Nation is taxed to support neighboring, non-Navajo governments while they pay nothing to the Navajo Government which continues to provide them with free services. Navajos are even more generous than that. Every time we step outside of the Navajo Nation, we are required to pay the same taxes that Anglos are required to pay.

The variety and number of businesses in the Navajo Nation are limited and Navajos are unable to purchase all their necessities within the Navajo Nation. Navajo Nation businesses do not adequately stock pick-ups, tractors, furniture, car parts, fresh fruits and vegetables and many other goods that Navajo people need. Navajos have to take their money outside the Navajo Nation to buy many of these things. Non-Navajo businesses in the surrounding area benefit from this situation. Not ony do the businesses profit, but we also contribute through taxes to the support of the city, county, and state governments surrounding the Navajo Nation.

Every time Navajos spend their money in Farmington, Gallup, Holbrook, Blanding, or Winslow, they are helping to support

the governments of the city and county and state. For example, when a Navajo spends one dollar ($1.00) in Gallup, four cents goes to the New Mexico State Bureau of Revenue; the State keeps the three cents and returns one cent to the Gallup City Government. In fact, the businessperson receiving that dollar may use part of it to accumulate more property which means more property tax revenue for Gallup and the State of New Mexico. Part of that dollar also becomes the businessperson's income, which the federal and state governments tax.

There is no tax that Navajos are exempt from once they leave the reservation. Navajos who own land and other property outside the boundaries of the Navajo Nation pay property taxes each year to the counties and states. Navajos must pay all Federal taxes regardless of where they live or work. Navajos who live and work off the Navajo Nation must pay state income taxes as well. The same is true for Navajos who live in the Navajo Nation, but work outside the boundaries of the Navajo Nation. Navajos who earn their money by working in the Navajo Nation, but who live outside also pay income taxes to the state.

Even in the Navajo Nation, Navajo people pay the indirect taxes on gasoline and cigarettes which go to the non-Navajo governments. We continue to pay these indirect taxes outside the Navajo Nation, along with other indirect taxes such as the taxes on alcoholic beverages.

D. Navajo Generosity in the Beginning:

Some Navajos probably think that Navajo generosity is excessive. We do not make the non-Navajos living and/or working in the Navajo Nation pay any taxes to help support Navajo government, from which they benefit in a variety of ways. Although the non-Navajo county and state governments provide a minimum of services to the citizens and residents of the Navajo Nation, they collect millions of dollars worth of taxes from inside the Navajo Nation. We have explained how Navajo people contribute to these governments with all the taxes they have to pay when they go outside the boundaries of the Navajo Nation. That is not all. Still unmentioned are our largest handouts for the welfare of the Anglos who now accuse us of being overly dependent on their generosity.

When the non-Indians came to what is now the United States, most of them were very poor. Many of them were like the Vietnamese who were recently brought to this country. Many came to North America because they were being persecuted for their religion. The Catholics settled in what is now called Maryland, the Puritans settled in Massachusetts, and so forth. These people were very poor. In fact, the first White People to settle in Georgia were debtors (people who could not pay their bills) and other convicts from prisons in England. The Indian tribes with which they came into contact gave them land and seeds and taught them how to hunt and fish. These were probably the first welfare and training

programs in what is now known as the United States.

When the White settlers were given land or when they took the land by force, many times they signed agreements or "treaties" with the tribes. Later when the colonists rebelled and won their independence from England, they formed the United States Government, and continued to expand westward toward Navajo country, forcing Indian tribes to give up their lands and sign treaties.

In 1868, after most of the Navajo People had been imprisoned at Fort Summner for four years, some of the Navajo chiefs signed a treaty with the United States. In return for millions of acres of Navajo land, the United States Government promised to provide certain services to the Navajo People. Over the years, the courts of the United States have interpreted Indian treaties to include various rights. Many of the services which we receive from the Federal and state governments are direct results of the provisions of the 1868 Navajo Treaty with the United States. The Federal Government provides the greater portion of the funding for most of the programs provided to Navajos by the states. We are receiving these services in return for the lands and political rights which we turned over to the Americans.

It must also be realized that non-Navajos are eligible for most of the Federal funding programs for which the Navajo Government applies. Poor Anglos who have never signed any treaties, and who were never forced to give up any land also receive government services; if anybody is "getting something for nothing," they are the ones.

III. Taxes: The Way Other Governments Finance Their Operations:

An economist familiar with Navajo government refers to the Navajo method of government finance as "economic canabalism". The Navajo Nation is using up money to pay for government which should be used for investment. The investment could be in ways to develop Navajo mineral wealth which would assure greater Navajo control and profit. The present manner which is used to finance Navajo government is indeed strange. Most other governments pay for their operations with taxes.

What Are Taxes?

Taxes are money which governments collect from individuals, groups, and businesses to finance operations. Taxes are used to pay the people who are elected to political office. Taxes pay for the buildings that are used for government offices, for the electricity used in these offices, for keeping the government building clean and in good repair, for office machinery, to pay the secretaries, and so forth. Taxes pay for the services and materials which governments provide to their citizens. For example, taxes pay for the construction of highways, for law enforcement, for welfare payments, and for schools. Tax money is used to pay the teachers who teach in the schools, the people who are hired as policepersons, and the companies that build the highways.

There are all kinds of taxes levied by governments in the United States. There are taxes on the incomes of individuals and businesses. The property of individuals and businesses are also taxed. There are taxes on the sales made

by businesses. A special tax can be levied on the sale of a certain item or service. Examples of special taxes on items are the luxury taxes on tobacco and alcoholic beverages. Special taxes can be levied on industries for certain economic activites. Examples are the natural resources severance tax paid by companies taking resources from the land, and the special taxes paid by utilities and financial corporations.

It is not unusual for an individual or business to be paying taxes to a number of governments simultaneously. In fact, an individual or business can also be paying a number of taxes to the same government.

Governments can exercise a great deal of imagination in their tax collections. A tax can focus on a particular industry, a particular item, a particular economic activity, a certain group of people, and so forth. There are actually few limitations as to who and what a government can tax, except possibly adverse citizen reaction to an obviously unfair tax.

In deciding who and what to tax, governments can consider who will benefit most from a certain program or service, and tax those who will benefit most. A government can consider the source of a problem that causes government expenditure and tax those that create the problem. However, a government can also levy a tax on a certain segment of the population with the express purpose of providing benefits to another group in the society. In deciding who and what to tax, a government may consider simply who can best carry the burden of the tax.

Taxes and Government Policy

Besides simply providing the money to operate a government, taxes can be used in various ways by the government to support its social, political, and economic policies. If a government wishes to apply its laws and standards to some activity, government control is easier if the government also provides the money to carry on the activity. A good example here is schools. Governments want to be sure that schools are effective at teaching the skills they are supposed to be teaching - that medical schools turn out competent doctors, and so forth. By controlling education, governments can be certain that new generations are instilled with patriotism. Governments support schools through taxation so that uniform standards can be enforced.

Taxes can also be used to deal with problems created by businesses. Through taxes, the same businesses that created the problems can be made to pay for the government action needed to solve the problem. An example is the New Mexico Oil and Gas Conservation Tax. This tax raises money for the bureaucracy needed to police the oil and gas industry. The money raised from this tax is not only used to deal with current oil and gas industry problems, but also to research future problems related to the whole area of energy. The work is done through the New Mexico Energy Resources Board which is funded by the money from the Conservation Tax.

Governments can do this; they can tax the parties that

force the need for government action, but this is not always the case. Most of the time governments tax one segment of society to pay for problems present in another portion of society. Social Security taxes are a good example of this type of taxation. Younger working people pay these taxes which mainly go to older, retired people. Welfare payments are another example of taxes being used to redistribute income, in this case from the affluent to the poor.

There is special concern among all governments that "outsiders" or non-citizens pay their fair share for benefits which they receive despite not being citizens of that government. Governments are also greatly concerned when money made in their jurisdictions by non-citizens is taken outside. It is easy to understand: if the money stays in the country (city, county, state, etc.), it can be invested in more businesses to provide more jobs which means more tax revenues. But if the money leaves the country, it will end up benefiting a foreign economy instead.

To deal with this situation, governments can put a large tax on money that is going outside. A good example of this is the fee that the McKinley County Government in New Mexico charges carnivals and other shows which set up business for a few days and then leave. The carnivals not only take money out of the County's economy, but they also benefit from the services, such as law enforcement and roads, without paying taxes. McKinley County taxpayers are paying for these

services which make it possible for the carnivals to do business. The County's solution is to collect a one thousand dollar ($1,000) per day fee (tax) from carnivals and similar enterprises. This is "taxation without representation", but few would say that the "fee" or tax is unfair.

Taxation is necessary for a government to operate. Even if a government is not interested in providing a lot of services to its citizens, it must have money to pay for its operating costs and to provide those basic services which it must make available to be called a government. A government can use taxation in many ways to protect its citizens. Since taxes are necessary for a government to operate, governments are very protective of their right to tax. It is not exaggerating to say that governments have to tax in order to exist.

IV. Tribal Taxation:

The governments of Indian tribes do have the power to tax. A number of tribes, including Zuni Pueblo and the Hopi Tribe, have implemented taxation programs. A Navajo taxation program would of course be more complex; businesses in the Navajo Nation are more and varied, and a great deal more money circulates. Nonetheless, the two small tribes deserve our admiration for the initiative they have exercised in implementing their power to tax. The success of their taxation programs appears even greater when considered against the giant Navajo Nation's inaction.

A. Zuni Taxation:

The Zuni "Occupational Retail Sales Tax" was imposed on June 26, 1967.[27] Wholesale and manufacturing activities are exempt, but since there are none of these businesses presently in the Pueblo, the tax applies to all businesses in Zuni Pueblo. The tax is passed on to Zuni consumers, but merchants are not allowed to add the tax if the amount of transaction is less than one dollar. The present tax rate is one per cent, and is collected on the sales made by 47 licensed businesses. The taxes collected in fiscal year 1975 totaled $23,794.20. The tax is collected monthly. The penalty for late payment is ten per cent of the amount due. Ms. Contina, the payroll clerk responsible for tax collections estimates that she spends a total of sixteen

27. This discussion on Zuni taxation is based on an interview with Ms. Rona Contina, Payroll Clerk, Zuni Pueblo, July 25, 1975.

hours on tax collections and related work. Audits have never been made, but public pressure in favor of regular audits is building.

There are two prominent features of the Zuni Taxation Program. First, the tax is collected from non-Indians directly (from Anglo Businessmen) and indirectly (the tax is passed on to Anglo customers). Second, the tax is imposed upon businesses which do not even maintain an office in Zuni Pueblo. The tax ordinance, in section 140-3, "Gross Receipts Defined", states that, "Receipts resulting from transactions concluded off the reservation which originate from the conduct and operation of a business or service" shall be taxed. Thus, the sale of natural gas to the residents of the Zuni Reservation by a non-Indian company in Gallup is taxed. Similarly, sales made by the Continental Divide Electric Company of Grants, New Mexico are taxed. These businesses are required to have licenses granted to them by the Zuni Tribal Council before they engage in business on the reservation.

It is impressive that the Zuni Tax Ordiance is only a three page Zuni Tribal Council resolution, and that the monthly collections are handled by one payroll clerk working about sixteen hours a month.

B. Hopi Tribal Taxation:

The Hopi Tribal Government has been taxing since 1968.

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28. The information presented on Hopi taxation is based on an interview with Mr. John Hennessee, employee of the Hopi Tribe, New Oraibi, Hopi Nation, December 10, 1975.

There is just one kind of tax; it is referred to as a "privilege tax" by John Hennessee, an employee for the Tribe, and as a "business revenues license fee" by Hopi Tribal Ordinance No. 17, the ordinance authorizing the tax. Chapter II, Section 2 of the Ordinance states that the tax shall consist of an "annual fee of $30.00 per place of business, plus an additional fee equal to three per cent of the annual gross income of said business, trader, profession, and calling derived by its operation within the reservation".

Mr. Hennessee admits that the Ordinance is "weak". While the Ordinance was meant to tax all businesses, some businesses have escaped paying the tax. The banks and the telephone company do not pay the tax. The Arizona Public Service Company, the largest company doing business on Hopi land is not taxed either. The Tribe is planning to rewrite the Ordinance to include a whole range of taxes to apply to all business activity on Hopi land.

Even with the major businesses not paying the tax, current annual collections are estimated at $70,000. The total of taxes collected since 1968 is approximately $300,000 according to Mr. Hennessee. These amounts were collected from five sources: a restaurant-motel complex, a natural gas company, and three trading posts. The tax revenues are considered substantial to the Hopi Tribal Government which has very limited revenue sources.

The merchants are allowed to pass the tax on to consumers. The Anglo tourists as well as the Hopi People end up paying

the tax indirectly.

The taxation program has been very simple to administer since the businesses taxed are so few. The businesses send their checks to the Tribal Treasurer quarterly. According to Mr. Hennessee, "The work involved is just a matter of depositing the checks." There is no special staff responsible for tax collections. When the taxation program is expanded, a staff will be authorized to administer the program.

C. The Legal Situation:

Few Indian tribes have attempted to implement a comprehensive plan of taxation. As a result, there are definitely some uncertainities about the scope of the taxation power of Indian Tribes. Nevertheless, the power of Indian Tribes to impose taxes has never been successfully disputed in the Courts. Cohen, Handbook of Federal Indian Law, 42. The leading case on Indian Taxation is Buster v. Wright, 135 F. 949 (8th Cir. 1905), which tested the power of the Creek Nation to levy a tax on non-Indians doing business within the boundaries of the reservation. The Court found that the Creeks had lawful authority to require payment of this permit tax by non-Indians. In so doing, the Court held that the power of taxation is one of the inherent attributes of the sovereignty of Indian Tribes and that as such it could only be altered by an act of Congress. See also, Morris v. Hitchcock, 194 U.S. 384, 48 L. Ed. 1030 (1904).

These two cases have been relied upon in more recent decisions. In IronCrow v. Oglala Sioux Tribe of the Pine

Ridge Reservation, 231 F. Ed 89 (10th Cir. 1956), the court upheld a tribal privilege tax imposed on non-members for grazing stock within the reservation. The Court held that since Congress had not acted to limit or deny tribal powers of taxation the Tribe had full sovereign powers to tax. See also. Barto v. Oglala Sioux Tribe of the Pine Ridge Reservation.

Thus, it appears that the Navajo Tribe has the same powers of taxation as does a State like Arizona or New Mexico. Indeed, the courts are vigorously supporting the power of Indian tribes to tax non-Indians who engage in business within the territorial jurisdiction of a tribe.

What about those situations where the Navajo Tribe gave up its power to tax in order to get royalty payments? The lease for Navajo Mine near Shiprock presents this question. In this situation the law appears to say that if the Navajo Tribe agreed to not impose a tax in return for the mine paying royalties, the Navajo Tribe cannot now impose a tax. Stone v. Mississippi, 101 U.S. 814 (1880). However, there is no law that prevents the Navajo Tribe from attempting to renegotiate the lease to allow for the imposition of taxes on the Navajo Mine. An effort to renegotiate these types of leases should be started immediately. If the companies do not want to renegotiate, then, the Tribe should consider withholding approvals for rights-of-way in an effort to pursuade the companies that renegotiation is best for everyone.

The other big questions involved in Indian taxation involves the conflict of taxing powers between a Tribe and a State. For example, New Mexico State taxes the coal mines operating on the Navajo Reservation. There is no doubt that the state is allowed to do this. Agua Caliente Band of Mission Indians v. County of Riverside, 442, F.2d 1184, 1186 (9th Cir., 1971). But there is also no doubt that the Navajo Tribe can still go ahead and impose its own tax on these coal mines. If the Navajo Tribe did impose a tax, it is quite likely that the coal companies would go to court to try to get out of paying either the State or Tribal taxes. Based on all of the cases which have decided questions involving the taxation powers of Tribes, it is reasonable to expect that a court would uphold both the state and the tribal taxes on these coal mines.

In summary it can be said that the Navajo Tribe has the same powers of taxation as does any State. Only the United States Congress can take away the taxing power and there is no indication that this will happen.

V. The MacDonald Administration and Navajo Taxation:

The development of a comprehensive taxation program for the Navajo Nation seems to have a low priority within the goals of the MacDonald administration. While the development of a Navajo Nation taxation program is mentioned in most of the development plans written by the administration, the total effort appears half-hearted. No feasibility studies have been initiated by the Navajo Government, at least not in recent times.[29]

On January 10, 1974, the Navajo Tribal Council passed a resolution establishing a "Navajo Tax Commission", and amending the Fiscal Year 1974 Budget to include $50,000.00 for the Commission's expenses (See Appendix 3). The resolution also authorized the Chairman to appoint three members to the Commission with the approval of the Advisory Committee. It took Chairman MacDonald at least 19 months to make the nominations for the Commission. In September and October, 1975, Chairman MacDoanld finally nominated two Navajos, Mr. Glenn C. George of DNA-People's Legal Services, Inc., and Mr. Robert Shorty of the Office of Navajo Revenue Sharing to be members of the Tax Commission.[30] An Anglo, Professor David Cole of Harvard University was also nominated.[31] In March, 1976, more than two years after the Tribal Council resolution creating the Tax Commission, the nominations had not been confirmed by the

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29. Interview with Larry Ruzow, General Counsel's Office, The Navajo Government, Window Rock, Navajo Nation, December 3, 1975.

30. Ibid.

31. Ibid.

Advisory Committee and the Commission had yet to hold a meeting.[32] Now, the Tax Commission nominees have been approved and a staff has finally been hired, but the delay has cost the Navajo Nation millions of dollars in tax revenues.

It cannot be said that the MacDonald administration has done absolutely nothing. Recently, when the 1976 New Mexico State Legislature considered taxing the leasehold interests of non-Indians on Indian land, the administration presented testimony and released statements to the news media asserting that the State had no right to tax property on Navajo lands. Before, when the Arizona State Legislature contemplated taxes of the same kind, the administration made a similar effort to block the move. However, even these efforts, at least in the New Mexico instance, are questionable. Mr. Leo Watchman, the Navajo Representative in the New Mexico House, in a front page story of the Navajo Times, criticized the administration for not having done enough.[33]

For a man who speaks so eloquently about how Navajos must "claim what is ours", Chairman MacDonald has been very slow to take the necessary steps to lay the foundation for Navajo Government taxation.

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32. Interview with Mr. Glenn C. George, Director of Community Education, DNA-People's Legal Services, Inc., and member of the Navajo Nation Tax Commission, Window Rock, Navajo Nation, March 2, 1976.

33. Front page story of Navajo Times, "Leo Watchman", March 5, 1976.

Meanwhile, the Chairman and his administration have been entertaining ideas for massive development of Navajo coal resources. One of the projects under serious consideration is the WESCO Coal Gasification Complex to be built in the northern portion of the Navajo Nation. Under the plan, a fairly uncommon process to obtain synthetic gas from coal will be used. A town of 25,000 people, a large number of them non-Navajo, may be designed to support the complex.

From WESCO's own fact sheet, "Data as of January 1, 1975", we have derived Illustration No. 4 on page 47. The illustration compares the income that the Navajo Government will receive in royalties with the tax revenues that local non-Navajo governments will realize. WESCO estimates that "local taxes" will amount to $30 million in the first five years, and that annual royalties to the Navajo Nation will be $2.7 million. Thus in the first five years, Navajo royalties will total $13.5 million while local taxes will amount to $30 million.

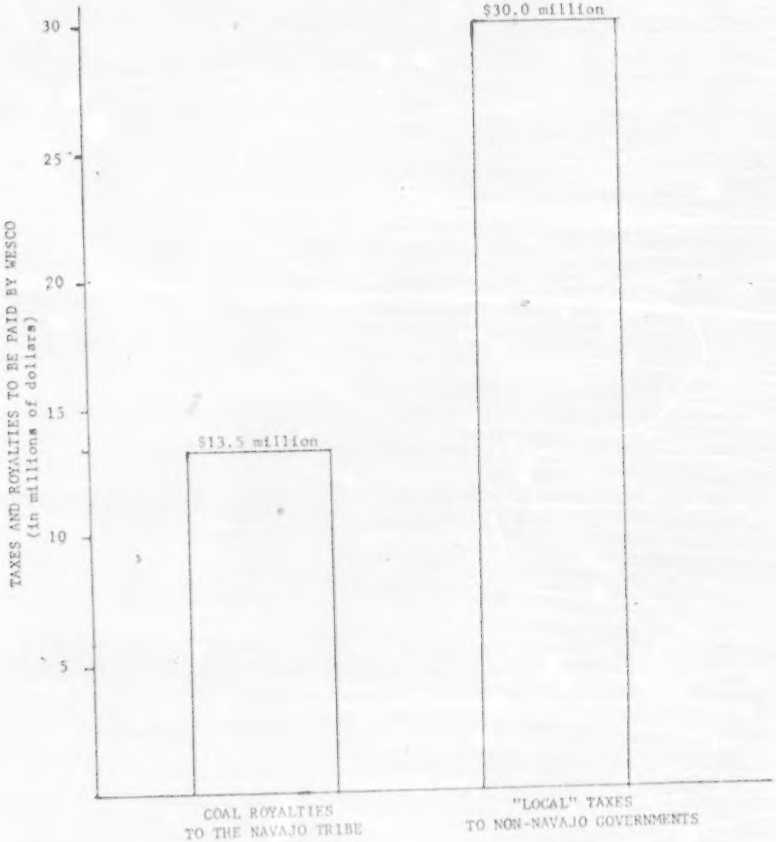
Of course there will be jobs for Navajos in the construction and operation of the Gasification Plant, but it is time that the Navajo People receive the full benefit of the development of their natural resources. As long as the Navajo Government does not tax, any industry that any Tribal administration brings to the Navajo Nation cannot be called "development".

True development must also include taxation by the Navajo Government.

It is frightening that the MacDonald administration, while barely able to initiate a program of responsible government through taxation, is seriously considering a plan for an instant community of 25,000 people.

Illustration No. 4

TAXES AND ROYALTIES TO BE PAID BY WESCO
OVER THE FIRST FIVE YEARS
(in millions of dollars)



VI. Conclusions and Recommendations:

A. Conclusions:

1) The Navajo People have a right to self-determination, and the United State Courts, in their interpretation of treaties and law, recognize and support this right;

2) It is Navajo money from natural resouces that is the major source of financing for the Navajo Government;

3) Navajo People cannot depend on their natural resources to finance their government forever; the oil, gas, and other minerals will be used up, or will become obsolete;

4) Navajos and non-Navajos benefit from the Navajo Government, but, non-Navajos who pay nothing toward the operation of the Navajo Government realize a great deal of money from their jobs and businesses in the Navajo Nation;

5) City, county, state and the Hopi and Zuni government use taxation to finance their operations, as do most governments;

6) There is great potential for a Navajo Nation taxation program, as the millions of dollars collected by non-Navajo governments from sources within the Navajo Nation reveals;

7) The Navajo Government has the right to tax Navajos and Anglos; and,

8) The MacDonald administration has been slow to implement the Tribal Council resolution of January 16, 1974 creating the Navajo Nation Tax Commission; the Navajo Nation has lost millions of dollars in the meantime.

B. Recommendations:

1. THE NAVAJO GOVERNMENT SHOULD BEGIN TAXING AS SOON AS POSSIBLE.

a) The tax burden should not fall on the poor Navajos who have been "taxed" enough by having to forego the full benefit of the natural resources income from their lands.

b) As much as possible, the Navajo Government should operate on taxes; the income which the Navajo Government receives as landowner (rents and royalties) should be put into an investment fund to establish Navajo controlled enterprises in the Navajo Nation and to otherwise strengthen the Navajo economy.

c) It is about time that the non-Navajo individuals and corporations which prosper in the Navajo Nation pay for the Navajo Government which makes their economic activity possible.

d) Navajos whose incomes are adequate should be taxed.

2) THE NAVAJO TRIBAL COUNCIL SHOULD IMMEDIATELY DECLARE A MORATORIUM ON ALL MAJOR DEVELOPMENT IN THE NAVAJO NATION UNTIL A NAVAJO TAXATION PROGRAM IS READY FOR IMPLEMENTATION

C. Summary:

It is wrong for the Navajo Government to continue to neglect its citizens by not implementing a taxation program. Navajo citizens continue to foot the bill for Navajo government while the non-Navajos who make the biggest salaries and who own most of the businesses in the Navajo Nation pay nothing in taxes.

APPENDIX I

ANALYSIS TRIBAL INCOME

	1972	1971	1970	1969	1968	1967	1966	1965	1964	1963
Oil & Gas										
Royalties	4,920,445	5,398,740	5,587,406	5,882,460	6,624,848	5,600,630	5,768,269	5,883,439	6,700,679	10,733,672
Bonuses	68,913	389,910	507,596	2,024,314	2,736,388	966,876	616,204	3,518,895	19,444,480	
Rentals	919,724	891,437	905,737	1,323,922	1,198,267	1,107,805	1,553,213	1,900,063	1,494,709	2,509,163
		6,680,087	7,003,739	9,236,696	10,557,503	7,675,311	7,937,676	11,313,424	29,639,448	13,242,835
Mining										
Uranium Lease Bonuses	73,520	3,482,404								
Mining royalties & permits	1,945,287	1,273,487	1,040,669	1,043,111	645,771	539,390	455,009	561,367	391,584	506,840
		4,755,891	1,040,669	1,043,111	645,771	539,390	455,009	561,367	391,584	506,840
Interest Income	3,811,595	4,022,677	3,962,179	3,644,813	3,457,313	3,571,050	3,313,730	3,001,674	2,846,144	3,081,563
Extraordinary Income		3,206,019	Telephone system							
Traders Site	786,678	1,044,803	879,980	528,512	144,253	522,733	362,350	284,402	258,303	460,873
Timber	1,438,119	710,510	742,352	1,239,365	326,468	440,609	304,915	224,457	258,589	203,249
		9,034,269	5,584,511	5,412,690	4,428,034	4,534,392	3,999,995	3,511,033	3,363,036	3,745,685
Other		3,978,260	5,414,873	840,246	702,033	507,648	449,278	574,891	635,659	540,622
TOTAL	19,361,915	26,448,508	19,043,792	16,526,743	15,333,341	13,256,541	12,841,958	12,960,865	34,030,227	18,036,182

APPENDIX 1

	1962	1961	1960	1959	1953
Oil & Gas					
Royalties	9,069,234	10,755,418	11,470,106	9,375,263	689,643
Bonuses					
Rentals	3,470,306	4,888,813	3,443,945	6,549,282	26,974,630
	12,539,540	15,644,321	15,914,051	15,924,545	27,664,273
Mining					
Uranium Lease Bonuses					
Mining royalties & permits	423,041	449,928	727,608	651,492	732,269
	423,041	449,928	727,608	651,492	732,269
Interest Income	3,162,925	3,131,317	2,987,356	2,279,154	1,847,013
Extraordinary Income					
Traders Site	312,111	320,238	392,747	320,409	174,774
Timber	81,821	131,561	191,022	123,433	192,937
	3,556,857	3,583,116	3,571,125	2,722,796	2,214,724
Other	423,466	123,222	324,106	241,880	12,026
TOTAL REVENUE	16,962,904	19,154,053	18,536,890	19,540,713	30,629,292

GRAND TOTAL (Tribal Income 1938-1972): $279,326,652

Source: Data compiled from Peat, Marwick, Mitchell and Co. by the Bureau of Indian Affairs, Navajo Area Office, Gallup, New Mexico. Data Supplied by Mr. Merlin Altson, March 12, 1976

APPENDIX 7

Navajo Government General Fund Unappropriated Balance and Revenue - Expenditure Comparisons, 1958-1972

	1972	1971	1970	1969	1968	1967	1966	1965	1964
Unappropriated Balance	47,443,127	34,131,554	47,597,195	50,340,136	47,900,533	53,049,872	57,156,494	67,637,744	99,476,928
Revenue	19,561,915	26,443,508	17,989,831	16,526,743	16,333,341	13,233,804	32,641,958	37,960,805	36,609,727
Expenditures	25,928,557	21,381,494	18,537,275	19,170,592	18,176,572	22,270,882	20,773,943	22,960,234	20,470,160
Excess (deficiency) of revenues over expenditures	(6,366,642	5,067,014	(547,444)	(2,643,849)	(1,843,231	(9,017,078)	(7,932,027	(3,999,429)	15,160,119

	1963	1962	1961	1960	1959	1958
Unappropriated Balance	59,143,985	61,566,424	63,609,677	69,544,396	73,613,343	68,877,147
Revenues	18,036,182	16,442,904	20,058,220	18 510,890	19,540,713	30,629,292
Expenditures	19,795,830	21,865,838	19,087,039	19 551,017	22,818,629	12,640,543
Excess (deficiency) of revenues over expenditures	(1,759,648)	(3,005,934)	990,581	(1 014,189)	6,721,884	17,982,749

TOTAL REVENUES 1958-1972: $279,720,652

TOTAL EXPENDITURES 1958-1972: $296,498,357

Source: Data compiled from Peat, Marwick, Mitchell and Co., by the Bureau of Indian Affairs, Navajo Area Office, Gallup, New Mexico. Data supplied by Mr. Clifford Bowman, March 15, 1976.

APPENDIX 3

CJA-6-74

Class "B" Resolution
Area Approval Required.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Establishing a Navajo Tax Commission
and Amending Approved Fiscal Year 1974 Budget

WHEREAS:

1. Various studies and surveys made by and on behalf of the Navajo Tribe have shown that taxation within a comprehensive taxation program would be in the best interests of the Navajo people, and

2. The right to tax is an inherent right of the Navajo Nation and one aspect of its sovereignty, and

3. A comprehensive tax system will provide necessary income and contribute to the well-being of the Navajo people, and

4. The most appropriate format for a system of comprehensive taxation would be through the creation of a new branch of the Executive Department of the Navajo Tribal Government.

NOW THEREFORE BE IT RESOLVED THAT:

1. The NAVAJO TAX COMMISSION is hereby established as a part of the Executive Branch of the Navajo Tribal Government.

2. (a) The Commission shall consist of three members, at least two of whom shall be Navajos residing within the Navajo Nation.

(b) The Chairman of the Navajo Tribal Council shall select the Commissioners subject to confirmation by the Advisory Committee of the Navajo Tribal Council.

(c) The terms of office of Commissioners shall be three years providing, however, that in order to stagger the expiration of terms of office, one of the first group of Commissioners appointed shall be appointed for a term of one year, one for a term of two years, and one for a term of three years.

3. The Navajo Tax Commission shall have the following powers:

(a) To review and study all sources of income and wealth within the Navajo Nation and all possible taxes thereon.

(b) With the authorization of the Navajo Tribal Council, to lay and collect taxes on income from whatever source derived, to lay and collect taxes on property, both tangible and intangible, and to lay and collect taxes on sales, inventories and wages completed or earned within the Navajo Nation.

(c) To adopt by majority vote such other rules and regulations as it deems necessary for the proper functioning of the Commission.

4. Until a regular budget for the Commission is established and approved by the Navajo Tribal Council at its annual budget session, there is hereby appropriated the sum of $50,000.00 for the expenses of the Commission.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 30 in favor and 10 opposed, this 16th day of January, 1974.

Chairman
Navajo Tribal Council